IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.206 OF 2004

M/s Perfect Motors ... Appellants

v/s

Gajanan Bhalchandra Kher ... Respondent

Mr S.G. Deshmukh for Appellants.

Mr V.S. Gokhale for Respondent.

CORAM : D.K.DESHMUKH J.

DATE : 27TH JULY 2004

P.C.: -

1. This appeal is directed against the order passed by the Joint District Judge, Pune under section 34 of the Arbitration and Conciliation Act 1996 dismissing the application filed by the applicants challenging the award made by the Arbitral Tribunal. The first ground urged before me is that the final award dated 5th June 1998 is not in consonance with the amendments made in the award on 3rd August 1998. Admittedly, in the order of the Joint District Judge, this ground is not considered. According to the learned counsel appearing for appellants, this ground was argued before the learned joint District Judge. If the ground was argued before the learned Joint District Judge and does not reflect in the order, remedy of the appellants is to approach the same Court and not the Appeal Court.

The ground therefore cannot be entertained.

2. The second ground that was argued was that the District Court wrongly held that the counter claim submitted by the appellants was not arbitrable. The counter claim of the appellants was for damages alleged to have been suffered by them because the other side had

filed civil suit and secured an order of temporary injunction, during the period that order was operating, the property could not be sold. The Arbitral Tribunal has held that the claim is not arbitrable because it was arising out of the Court's order and out of the contract between the parties.

3. The third ground urged is that the award is contrary to the terms of the arbitration agreement. According to the leaned counsel, by notice the firm could not have been dissolved. The District Court and the Arbitrators by referring to the partnership agreement found that there was no prohibition on dissolution of the firm it was provided that in case the firm is dissolved, the business of the firm will go to one of the party and payment of money will be made to the outgoing party. I do not see any illegality in the findings recorded.

4. The fourth ground was that the balance-sheet has not been properly considered by the Arbitral Tribunal and the District Judge. Admittedly, this ground also does not appear to have been raised in the application. Therefore, as in the case of first ground referred above, the remedy is to approach the same Court and not the Appeal Court. Thus, all the grounds raised

by the appellants are without any basis or substance. The jurisdiction of this Court functioning as Appeal Court under section 37 of the said Act is extremely limited. This is a frivolous appeal filed by the appellants. In my opinion, the manner in which the appeal was argued before me, I will be failing in my duty if I do not impose exemplary costs on the appellants while dismissing the appeal. Considerable time of the Court was wasted. In this view of the matter therefore, appeal is dismissed. The appellants are directed to pay to the respondent Rs.25,000/- as and by way of costs. All the interim orders that are operating are vacated.

. Parties to act on the copy of this order duly authenticated by the Associate / Personal Secretary as true copy.

. Certified copy expedited.